

41
at
T R I A L

OF

FRANCIS GRAHAM,

One of the JUSTICES of PEACE
for the County of Dublin,

FOR ATTEMPTING TO SUBORN

JOSEPH CORBALLY, TAYLOR,

TO SWEAR THAT

A. HAMILTON ROWAN,

AND

J. NAPPER TANDY, ESQRS.

WERE AT THE

HEAD OF THE DEFENDERS, &c.

MAR 2 1909

KING's BENCH.

Tuesday, July 9, 1793.

The KING against GRAHAM.

INDICTMENT.

County of DUBLIN, } **T**HE Jurors of our Lord
to wit : } the King, upon their
oaths say and present, that Francis Graham, of Temple-street, in the county of Dublin, Esq; being a wicked and evil disposed person, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, contriving, and falsely, and maliciously, and corruptly intending, by unlawful ways and means, one Archibald Hamilton Rowan, Esq; a true and loyal subject of our sovereign Lord the now King, not only to despoil and to deprive of his esteem and reputation among the liege subjects of our said Lord the now King, but also to take away the life and estate of the said Archibald Hamilton Rowan, and to cause him the said Archibald Hamilton Rowan to be taken, arrested and cast into prison, for robbery and burglary, and for feloniously entering houses by force and taking away arms, and riotously appearing in unlawful assemblies of
A 2 armed

armed men, contrary to the laws of the land, and for aiding and abetting burglars, robbers and felons, and for heading and supplying with money, and corresponding with certain people called defenders, for the purpose of aiding, and abetting, and maintaining such people so called defenders in the perpetration and commission of burglaries, robberies, and felonies, entering houses by force, and taking away arms, and riotously and routously appearing in great bodies and armed. He the said Francis Graham, to fulfil and perfect his wicked contrivance and malicious intention aforesaid, on the 15th day of February, in the 33d year of the reign of our sovereign Lord George the third, of Great Britain, France and Ireland, king, defender of the faith and so forth, with force and arms, at Kilmainham in the county of Dublin aforesaid, falsely, unlawfully, unjustly, wickedly and diabolically, did solicit, labour and endeavour to persuade, procure, suborn and cause one Joseph Corbally, tailor, then (to wit) on the 15th day of February aforesaid, in the 33d year of our sovereign Lord the now King aforesaid, being a prisoner in the gaol of the county of Dublin aforesaid, for divers great sums of money, and divers promotions and preferments, against all truth, falsely, unlawfully, corruptly, unjustly, wickedly, and diabolically, to swear and say upon his oath, before some justice of the peace, or some other magistrate or person authorised to administer the same, that the said crimes and offences were committed by the said Archibald Hamilton Rowan; and to induce and cause him the said Joseph Corbally to say and swear, and to prove against him the said Archibald Hamilton Rowan, the crimes and offences aforementioned, he
the

the said Francis Graham, on the 15th day of February aforesaid, in the 33d year of our sovereign Lord the now King aforesaid, at Kilmainham aforesaid, in the county of Dublin aforesaid, then and there unlawfully, unjustly, corruptly, wickedly, and diabolically, and in prosecution of his said wicked contrivance and malicious intention, divers great promotions and advantages to the said Joseph Corbally did promise, on condition that he the said Joseph Corbally the manner and form aforesaid, would swear and say (meaning that he the said Joseph Corbally would swear on oath upon the holy Evangelists, to be administered the said Joseph Corbally by a justice of the peace, or some other magistrate or person authorized to administer the same), that the crimes and offences aforesaid, were perpetrated by him the said Archibald Hamilton Rowan.

The *second* count charges Francis Graham with offering Joseph Corbally sums of money, and great advantages, to swear that Archibald Hamilton Rowan and James Napper Tandy were at the head of the defenders, and had given them money to perpetrate the offences aforesaid.

The *third* count charges Francis Graham with offering to give 200*l.* to Joseph Corbally, to swear, &c. against Archibald Hamilton Rowan and James Napper Tandy as aforesaid.

The *fourth* count the same as the third, offering to procure 200*l.* for Joseph Corbally to swear as aforesaid.

The *fifth* count charges Francis Graham with promising Joseph Corbally the friendship, protection, interest and patronage of certain peers and men of great estate and degree within the realm, and a place

and office in the revenue if he would swear as aforesaid.

The *sixth* count charges Francis Graham with promising, and assuming upon himself to give Joseph Corbally 200*l.* to make a man of him, by procuring for him a place in the revenue if he would swear as aforesaid.

The *seventh* count charges the said Francis Graham with promising to procure for the said Joseph Corbally a place in the revenue, if he would swear as aforesaid.

To this Indictment the Defendant—Not Guilty.

NAMES OF THE JURY.

*ARCHIBALD MANNING,	JOSEPH BOLLAM,
*PASCHAL TAYLOR,	JAMES DUNN,
*GARRET WALL,	DENNIS LAWLESS,
PATRICK HOWARD,	THOMAS COURTNEY,
EDWARD BRAY,	*JOHN PORTER,
ROBERT CRAIG,	*MICHAEL KENNEDY.

Mr. *M'Nally*, Counsel for the Crown, rose to state the case:—Mr. Baron *Power* desired that no case might be stated;—if you do, and you mention matters not proved, I will go into the case myself, and tell the Jury where they have been attempted to be misled.—Mr. *M'Nally* answered, he should think himself highly culpable if he mentioned any thing which should not be proved in evidence;—but was ready to weave his right, if there was to be no statement on the other side.—Baron *Power* said he would always allow

Note:—The persons whose names are marked thus, * were on the Jury which found Corbally guilty of being one of an unlawful assembly, styled DEFENDERS; for which he had been sentenced to pay a fine of 50*l.* and be imprisoned two years.

allow Counsel for the prisoner, even in a capital case, to speak when Counsel for the Crown have insisted upon speaking; he had always done so upon circuit.—The constitution placed the Judge between the crown and the prisoner, and he would conduct himself accordingly.—I never heard such an offence as this charged against any man;—it is little short of a capital crime.

JOSEPH CORBALLY sworn, examined by Mr. *M^r Nally*.

Q. Where do you live?

A. At the *Naul*.

Q. Have you been for any time in prison?

A. I have.

Q. What prison?

A. In *Kilmainham*.

Q. How long were you there?

A. Since *February*.

Q. For what offence were you committed?

A. I was taken as a *Defender*.

Q. After you were committed, had you any private conversation with Mr. *Graham*; the Justice of peace?

A. I had.

Q. Do you recollect the subject?

A. I do.

Q. Tell the Court and Jury what conversation passed between you and him?

A. I was brought down out of the prison part of the jail to an apartment.

Q. Who brought you?

A. I cannot recollect.

Q. When you came down did you see any person?

A. I did.

Q. Who?

A. Mr.

A. Mr. *Graham*.

Q. Point him out ?

A. That is he.

Q. Did he apply to you upon any subject of a particular nature ?

A. He did ; he asked me did I know *James Napper Tandy* and *Hamilton Rowan* ; I said I did not ;—he asked me did I ever see any of their hand-writing,—I told him I did not ;—he told me I could not but have seen some of their hand-writing, and if I would swear against *James Napper Tandy*, or *Hamilton Rowan*, he would give me 200*l.* and prefer me to a post in the revenue.

Q. (*By the Court*) To swear what ?

A. To swear they were at the head of the people called Defenders, or giving money to them.

Q. Did you make any answer ?

A. I told him before I would swear against any man falsely, I would suffer to go out upon the board and be hung.

Q. Did Mr. *Graham* say any thing in consequence of this answer ?

A. No, Sir, he did not.

Q. Did he stay any time after this answer ?

A. No, he staid a short time.

Q. Did he ever make any other application to you upon this subject ?

A. No, Sir, he did not.

Q. Was there any person present at the time Mr. *Graham* had this conversation with you ?

A. Mr. *M'Kinly*, the Jailor was in the parlour.

Q. Was he in the same room with you ?

A. He was.

Q. Was he so situated as that he could hear you ?

A. I cannot

A. I cannot say, whether he heard or not.

Q. Was this in one of the small or large rooms?

A. It is not an over large room.

Q. From the place *M'Kinly* stood in, did Mr. *Graham* speak so loud as that *M'Kinly* could hear?

A. He spoke indifferently loud; any person there could hear him.

Cross-examined by the *Solicitor General*.

Q. How long had you been in Jail?

A. Three weeks.

Q. Three weeks before Mr. *Graham* came to you?

A. No.

Q. How long then?

A. Three days.

Q. How many days before that had Mr. *Graham* gone down to take you at the *Naul*?

A. Four days.

Q. Then was he the cause of putting you in Jail?

A. It was he that took me, he had one *Lamb* with him.

Q. How long after Mr. *Graham* had been in prison with you did you talk to any body else of it?

A. In about four or five days after.

Q. Who was that person?

A. *Nicky Tiernan*.

Q. Where?

A. In the Jail.

Q. There were a good many of the people from the *Naul* there too?

A. No, not many.

Q. Was not *M'Guire* there?

A. He was.

Q. Was not he from the *Naul*?

A. He

A. He was.

Q. You talked to him of it.

A. I did, I believe.

Q. You were very intimate with *M'Guire* ?

A. I was in his company very often at the *Naul*.

Q. He was committed for the same offence you were ?

A. No, he was not taken with me.

Q. Was he not taken at the *Naul* ?

A. No.

Q. Was he not charged as a Defender ?

A. He was.

Q. You were well acquainted with him ?

A. I was, being a townsman.

Q. Were there any other townspeople in Jail ?

A. There were.

Q. In the same apartment ?

A. They were.

Q. How many ?

A. Five or six.

Q. Were they all committed by *Graham* ?

A. *Duff* and *M'Guire* were ; I do not know whether the rest were .

Q. When did you first tell *M'Guire* ?

A. Some time after.

Q. Not so soon as you told *Nicky Tiernan* ?

A. No.

Q. How soon after did you tell him ?

A. I cannot tell.

Q. Who was the intimate friend you had in the body of the Jail ?

A. I do not know, they were all townsmen.

Q. They were all your friends ?

A. Not

A. Not my friends, I had made clothes for some of them.

Q. Were any of them related to you?

A. No.

Q. Were you all acquainted?

A. Yes, living in the same town.

Q. Did any of your family come to see you in the Jail?

A. They did.

Q. Had they constant access to you?

A. They were sometimes let up.

Q. Had you any relations?

A. My Step-father and Step-brother.

Q. They came very often to see you?

A. Not very often.

Q. How soon after you were taken?

A. My Step-father came the night I was taken.

Q. Did any come after?

A. They did, several in two or three days.

Q. After this conversation you were in a situation to have access to your friends?

A. I was in that situation, before Mr. *Graham* came to see, me and afterwards too.

Q. Do you remember whether any of your friends were with you the day Justice *Graham* was there?

A. No, not to my knowledge.

Q. Were any the day after?

A. I cannot recollect.

Q. You cannot recollect whether you mentioned this to any of your friends?

A. I had no friends but my Step-father.

Q. Did you mention it to him?

A. No not till I left the Jail and went to him.

Q. You mentioned this, to *Nicky Tiernan*?

A. Yes, and to Mr. *Doyle*.

Q. Did

Q. Did Mr. *Graham* mention this as if he intended you should keep it a great secret ?

A. No, he did not say as if he wished to keep it a secret ; he told me he would get me a place in the revenue and take me out of the *Naul* from among blackguards.

Q. *M'Kinly* the Jailor was in the room ?

A. He was.

Q. Mr. *Graham* did not speak so low as if he intended to keep it a secret from *M'Kinly* ?

A. He spoke as I am speaking to you now.

Q. How near was he to you and Mr. *Graham* ?

A. There was a table in the room, and he was over at the off side of the table, about as far as that corner.

(This was about seven or eight feet.)

Q. Did you answer with a loud voice when you said you would rather go out upon the board ?

A. I did not speak louder than I do now, I was weary.

Q. Were you *wary* or *weary* .

A. I was weary ; I was frightened that the like should happen to me.

Q. You were brought to trial ?

A. I was.

Q. What verdict was there ?

A. I was found Guilty.

[Here Solicitor General referred to the indictment, which charged him with being one of an unlawful assembly called Defenders.]

Q. Did you ever talk to *M'Kinly* afterwards upon this business ?

A. No.

Q. You

Q. You did not send for *Mr. Kinly* and ask him, what does this gentleman mean by 200/.

A. No.

Q. What was your occupation ?

A. I had been a taylor at the *Naul*.

Q. Did Mr. *Graham* know your occupation ?

A. I cannot tell.

Q. Do you not believe he knew you were a taylor at the *Naul*, at the time of this conversation ?

A. I do not know.

Q. How soon after this conversation had you any conversation with any person out of the prison ?

A. I was not out for some time.

Q. How soon after did any one come to you to induce you to take examinations ?

A. No one came.

Q. Did you ever make examinations ?

A. I did.

Q. Before whom ?

A. Justice *Wilson*.

Q. Who brought him to you ?

A. No one, I went to him.

Q. Who brought you there ?

A. I went with Mr. Dowling.

Q. Who introduced you ?

A. No one.

Q. You were an old acquaintance ?

A. *Nicky Tiernan* brought me to Mr. Dowling.

Q. How soon was this after the conversation with Justice *Graham* ?

A. A fortnight.

Q. *Nicky Tiernan* was out of prison ?

A. He was.

Q. No one came to you to take examinations ?

B

A. No

A. No one.

Q. How came it, that *Nicky Tiernan* did not bring some one to you ?

A. I cannot tell.

Q. (*By the Court*) You were in prison a fortnight after ?

A. I was, and until the commission.

Q. Who else beside *Nicky Tiernan* went along with you to Mr. *Dowling's* ?

A. No one.

Q. Who went with you to the Magistrate ?

A. *Nicky Tiernan*, Mr. *Dowling* and Mr. *James Tandy*.

Q. Who else ?

A. No one.

Q. Recollect all the persons who went ?

A. That was all.

Q. You went to Mr. *Dowling's* for the express purpose of having the examinations prepared ?

A. I went to *Nickey Tiernan*, when I was bailed out.

Q. (*By the Court*) Had you been bailed out at the time *Tiernan* took you to the Magistrate ?

A. Yes.

Q. You told him in four or five days after the conversation ?

A. Yes.

Q. And after you were bailed you went to Mr. *Dowling's*, and from that to the Magistrate ?

A. Yes.

Q. Who drew the examinations ?

A. Mr. *Dowling's* clerk, I believe.

Q. Were the ylong drawing after you came ?

A. No.

Q. They were soon drawn ?

A. They were.

Q. There

Q. There was a paper written before you came?

A. Not to my knowledge.

Q. It was afterwards?

A. Yes.

Q. Who were present at the time the examinations were drawing?

A. Mr. *Dowling* and his clerk.

Q. Who else?

A. No one else that I remember.

Q. You swore in your examinations that *M'Kinly* was present?

A. He was.

Q. You swore that?

A. I did.

Q. You told them before whom you swore your examinations so?

A. I did.

Q. Did those persons go to *M'Kinly* to enquire of the truth, or to swear him upon the same point?

A. I cannot tell.

Q. What do you believe?

A. I cannot tell whether or no.

Q. Did you desire them to go to him?

A. No.

Q. Did they express a wish to go?

A. I cannot tell, I heard nothing about him.

Q. Who slept with you every night in the Jail?

A. *M'Guire* some of the time, and *Charles Wall* the other part of the time, a stranger to me.

Q. He was a *Naul* lad?

A. He was.

Q. How near did he live to you?

A. A quarter of a mile.

Q. Did you ever make clothes for him?

B. 2

A. 1

A. I did.

Q. Now account to the Jury how you came to keep this a secret from all your townsmen, and then, after a fortnight, mentioned it to Mr. *Dowling* to go to Justice *Wilson*?

A. Because I did not think it signified any matter until I went to tell this gentleman.

Q. What gentleman?

A. *N. Tiernan*, a friend of mine.

Q. He told you it was a matter of consequence?

A. No, he did not.

Q. You knew not it was of consequence till then?

A. I knew it was unlawful to swear away the life of any man without cause.

Q. You thought it of no consequence till you told *N. Tiernan*?

A. I did not wish to tell it to every one?

Q. Where does *N. Tiernan* live?

A. At the *Naul*.

Q. How came you to tell him?

A. I thought him a friend of mine.

Q. He said it was a matter of consequence?

A. He said it was a hard matter to swear any man's life away.

Q. How comes it then, having told it in four or five days after, that it was a fortnight before you told any one else—Where is *N. Tiernan* now?

A. He was here all the week.

Q. Where is he now?

A. He went home after my trial.

Q. He conducted you to *Wilson's*?

A. No, he left me there.

Q. How came he to go away?

A. He had some business to do; buying yarn.

Q

Q. If this was a very criminal matter, would not Mr. *Graham* have whispered you, rather than call in any person else ?

A. I do not know.

Q. (*By the Court.*) Did Mr. *Graham* whisper to you at first ?

A. He spoke as your Lordship does now.

Q. And *M^cKinly* was present ?

A. He was.

Q. If Mr. *Graham* was doing a criminal act, to swear any men's lives away, do you think he would let the conversation be overheard ?

A. I do not know.

Q. Where had Mr. *Graham* first known you ?

A. I do not know ; I never knew him till I was taken by him.

Q. And that act gave Mr. *Graham* a title to your friendship and secrecy ?

A. I do not know ; I never saw him before to my knowledge.

Q. Were there not many others in the Jail under similar circumstances, and similar charges with you ?

A. Four or five.

Q. He had no more intimacy with you than any other ?

A. I do not know.

Q. If he intended to carry this proposition into effect, do you not think he would have made a similar experiment upon others ?

A. I do not know.

Q. How came you to know the names of those gentlemen more than any other ?

A. By the account Mr. *Graham* gave me of them.

Q. What account did he give ?

A. By their names :—*James Napper Tandy*, and *Hamilton Rowan*.

Q. Did you know them ?

A. I heard their names but never saw them.

Q. How came *N. Tiernan* not to stay for the trial ?

A. I do not know whether he knew of this trial.

Q. (*By the Jury.*) After this declaration between you and *Mr. Graham*, did he desire you to keep it a secret ?

A. No, he did not.

Q. You swore that *Graham* swore in a loud manner, so that a man at this distance would hear you ?

A. He did.

Q. You say you did not know the person who brought you down to *Mr. Graham* ?

A. I do not.

Q. (*By the Court.*) How soon after you had this conversation in the presence of *M^r Kinly*, did you see *M^r Kinly* ?

A. I saw him pass different times.

Q. Was it the same day or the day after ?

A. I do not know, for I had no discourse with him.

Q. Did you ever remind him of the conversation ?

A. No, not till the other day.

CASE closed for the Prosecution.

SOLICITOR GENERAL. I shall not presume to say a word after the rule laid down by the Court ;—it would be making this a matter of more consequence than was intended ; we will produce *Mr. M^r Kinly*.

John

John McKinly, examined by Mr. CALDWELL.

Q. Do you hold any office in the County of Dublin?

A. I do.

Q. What is it?

A. Marshal and Jailor to the Sheriff of the County.

Q. Have you been long in it?

A. Twenty years this month.

Q. Have you any property in the County?

A. I have; every gentleman in that box knows my property: I am worth ten thousand pounds.

Q. Do you know *Corbally*?

A. I do.

Q. Do you know Mr. *Graham*, one of the Justices of Peace for the County?

A. I do.

Q. Pray, do you recollect having been at any time in the company of *Corbally* and *Graham*, in any part of the Jail?

A. I do recollect the very precise day; it was on Friday the 15th of February.

Q. Do you recollect when *Corbally* was committed?

A. He was committed on the fifth.

Q. This was ten days then after *Corbally* was committed?

A. It was; *Graham* came down to me on the 15th, asked me had I been speaking to any of the Defenders—there were seven of them in all;—I said I was, one after one;—that I had studied them, and had brought Mr. *Manders* there who knew something of them;—I wanted to see what their object was;—I desired them to serve themselves to become evidence;—it was in vain.—He asked me which was the most intelligent;—I thought

—I thought *Corbally*, the taylor ;—Can you get him down, said he ;—yes, said I ;—he desired me to let him down ;—I said it would be better you should be alone, perhaps he might acknowledge something to you ;—he answered, I will do nothing without you ;—he would not even go in before me, but made the man go in first, and me after :—I said, you used to be stout ; why are you afraid ?—He put several questions to him, such as I did myself, as to their rising in arms, combining to raise a rebellion, that every gentleman in the County would support a prosecution against him ;—he asked him the meaning of the list of the names, as if the roll of his men, of which he understood he was Captain ;—he said it was a list of his customers. My good man, you hurt yourself, said Mr. *Graham* ; tell me all you know—it will be your interest ;—he said he could tell no more. —As to being far from him, the whole room with the bed is not so wide as this table.

Q. Did Mr. *Graham* make him such an offer as you heard this day ?

A. By my oath, before my God, he did not, nor any thing like it.

Q. Now, pray, Sir, was it possible that that offer could be made ?

A. No offer of money was made that I saw :—Mr. *Graham* asked him did he know *Hamilton Rowan* and *Napper Tandy* ; he said not ;—he was asked whether he had seen them in the neighbourhood ;—he said no.

Q. Was that all ?

A. It was.

Q. Could he have made any offer to swear against those

those men, or against any men without your hearing it ?

A. He could not ; I was between them ; neither would Mr. *Graham* leave the room till I went with him.

Q. Did Mr. *Graham* lean across and whisper him ?

A. No :—they were about the distance of Counsellor *Lysaght* and I. (*This was about two feet.*)

Q. You have heard long before this day of the charge ?

A. I am very happy to have an end of it, for my ears have rung with it from both sides of the house.

Q. Have you talked of it ?

A. I have to several : I said to some that I would say nothing till I came upon the table ; but I told Mr. Carmichael what I said now.

Q. Did you ever tell any one sportingly, or in earnest that such an offer was made ?

A. If I did it was in jest, or I was intoxicated :—A bottle of port has more effect upon me, than four had formerly, and makes me say a funny thing now and then.

Cross-examined by Mr. LYSAGHT.

Q. You hold a lucrative place ?

A. It is not, I do not get as much as would support the people about me :—of late it is more profitable, since I got a little patriotism in my house.

Q. By virtue of your oath had you any conversation with Dr. *Reynolds* relative to this matter ?

A. I had, and said before *Corbally* and him upon the Bible, that no such thing passed.

Q. Do you swear that you never made any confession or acknowledgment to Dr. *Reynolds* that such an offer was made ?

A. Why,

A. Why, Sir, the night Dr. *Reynolds* came to me, I had taken a hearty bottle, and I understood I did say some such thing ;—there were several people there.

Q. By virtue of your oath did you say it to Dr. *Reynolds*?

A. I never said it *solidly*;—if I did, it must be as a joke ; I must have been drunk.

Q. You swear you did not say it?

A. I do not.

Q. Did you ever tell Dr. *Reynolds* you threw in your word, and said, “ Oh, ho! you want to make their fortunes at once?”

A. I do not know but I might.

CASE CLOSED.

James Reynolds, M. D. called on the part of the prosecution.

Examined by Mr. *Emmett*.

Q. You are at present confined in *Kilmainham*?

A. I am.

Q. For what?

A. Refusing to take an oath before the Secret Committee of the Lords.

Q. Do you recollect having any conversation with *M'Kinly* on the night of your committal?

A. I had.

Q. Were you sober?

A. I was :—there was a good deal of wine drank in company, but I drank very little.

Q. What was said?

A. Speaking

A. Speaking of several circumstances, the conversation turned upon the lucky accident of Mr. *Tandy* being apprized of the scheme formed against him at *Dundalk*.—*M'Kinly* said, it was very right, for had he gone down, he never would have returned with his life, because there was a scheme to take his life away and Mr. *Rowan's*;—he mentioned Mr. *Graham's* having taken fifteen or sixteen persons at the *Nail* with a troop of horse—that he brought several to jail—some men were in the jail accused of being *Defenders*, and that Mr. *Graham*, in his presence, offered two of them 200*l.* each, and a place in the revenue, if they would swear, that Mr. *Tandy* and Mr. *Rowan* had been *Defenders*, and had given money to the *Defenders*.

Q. Did he seem to tell you that in a funny way?

A. He had drank a good deal, and appeared intoxicated—he talked a great deal, and had spouted the speech of the Apothecary in *Romeo and Juliet*.

Q. But he told this consistently?

A. He did.

Q. Had you any conversation with him since?

A. I had repeatedly.

Q. Had you any conversation with *Corbally*?

A. I had.

Q. Had you lately with *M'Kinly*?

A. Yes, last *Sunday*.

Q. What was it?

A. I told him, if he came forward to swear that Mr. *Graham* had not made those offers, that I must, from a sense of Justice, declare he had acknowledged it to me;—he said I must be mistaken, for he had acknowledged no such thing.—Next morning he came, and said the conversation last night gave him some uneasiness;

uneasiness; I will send, said he, for *Corbally*, and give you satisfaction. *Corbally* was brought down; *M'Kinly* took up a book, and swore in a solemn manner, that he would tell every thing that passed in his presence:—he then said, that Mr. *Graham* desired him to be present at the examination of *Corbally*; that Mr. *Graham* by no means consented to go in unless he was present; both he and Mr. *Graham* urged *Corbally* to discover every person concerned, and that it would be *his interest* to do so—Mr. *Graham* asked “Have you ever seen Mr. *Rowan* or Mr. *Tandy*.”—“*Oh, ho!*” said *M'Kinly*, “you mean to *make his fortune at once*.”—*M'Kinly* concluded, saying, that was all that had passed. *Corbally* began to speak of the rewards and the places; *M'Kinly* said, by virtue of my oath, I never heard any thing of the money, or the places being offered.

Cross-examined by Mr. DAY.

Q. You say this was on the evening this man was lodged in Jail?

A. It was the evening I was committed by the House of Lords.

Q. There were some inebriated?

A. I cannot say, but I am conscious I was sober myself.

Q. But what *M'Kinly* said was rather in a grotesque manner?

A. It was rather.

Q. (*By the Court.*) When were you committed?

A. 27th of March.

Q. One word may make much difference in what falls from a witness; can you take upon you to say that

that *McKinly* said, that those words were stated upon the oath of *Corbally*, but that they were not true?

A. I am confident I am not mistaken in what *McKinly* said to me that night; it made a strong impression upon my mind.

Q. In the last conversation *McKinly* stated in a very solemn manner, that no such offer was made?

A. He did.

Q. Can you form any belief—have you that opinion of *Corbally*—as a man of sense, do you really believe that *Corbally* would have refused the offer of 200*l.* and a place in the revenue if such was made to him?

A. By virtue of my oath I have heard such instances of *Corbally's* integrity, that I think he would have refused such an offer.

Q. Who has furnished you with those instances of his integrity: The records of this commission convict him?

A. I have heard instances of his integrity.

Q. From whom?

A. I have heard them from several persons.

Q. From whom?

A. I have heard a circumstance I am going to mention from Mr. *Rowan*.

Q. What is that?

A. That at the moment—*Here the witness was stopped by the Counsel cross-examining him.*

Q. Did you hear of any instance from any other person?

A. I did.

[Here Counsel for the prosecution mentioned, that as something was stated respecting Mr. *Dowling*, he was ready to wave his privilege, and to be examined.]

Solicitor General. There has been a witness called to *M'Kinly's* credit:—I offer for the Traverser, the evidence of as consistent and clear a headed man as *Dr. Reynolds*, to them, that *M'Kinly's* account has been uniform and consistent with the account given this day.

Mr. WHITE, *examined by* SOLICITOR GENERAL.

Q. Do you know *M'Kinly*?

A. Many years.

Q. have you had any occasion to know his integrity?

A. I have, from serving the office of Sheriff.

Q. He is a good Jailor?

A. He is.

Q. Have you heard of any acknowledgment, or declaration relative to this business?

A. Something tantamount; this matter made some noise in town, and I was much surprised—one day I was in a silver-smith's shop in Skinner-row and *M'Kinley* was riding by: I stopped him and said "This is a very odd charge against Mr. *Graham*, and I am informed that in the examinations you are in a manner referred to, by saying you were by at the whole conversation."

sation"—“ Sir, said he, I do not wish to say any thing of the matter.”—“ I said it all falls upon your shoulders; if he is guilty he ought to be punished, and if innocent, it rests upon you”—He answered, “ I have heard of this matter from many on one side and the other: As God is my Judge, the man no more said it than you—and if he had I would as soon say it against Mr. *Graham*, as any other man.”—I am sure you would, said I, for I knew he did not like *Graham*.

Cross-examined by Mr. LYSAGHT.

Q. What question did you ask *M^r Kinly*, was it whether *Graham* had offered to suborn?

A. No, I said the charge was an odd one.

Q. Did you perceive by *M^r Kinly* that he saw you were more interested to save *Graham* than for the prosecution?

A. I am not so anxious, and I knew that *M^r Kinly* and *Graham* are inimical.

Q. What was his employment before he became Jailor.

A. He has told me something of himself that I do not believe ever passed;—that he was brought fourteen days in a fortnight before Sir *John Fielding* and always escaped; one day he was charged as a vagabond, and on his way to the office, picked up a pair of curling tongs in the street, which saved him, by pulling them out of his pocket, shewing them as the instrument of his trade, and a visible way of making a livelihood—At the Sessions he tells a number of these extravagant things by way of entertaining the company.

C 2

Q. Mr.

Q. Mr. *White*, then your opinion of *M'Kinly's* veracity depends upon the number of lies he tells ?

A. No such thing, I would go bail for him 1000l.

Mr. Baron Power. The Counsel for the Crown, and the Traverser, by not speaking to the evidence, have rendered it unnecessary for me to say more than state the evidence, and to make one or two observations upon the case. The practice adopted does them much honour :—it is the uniform practice of the *Old Baily* : every one knows that speaking to evidence in questions of this kind is useless if the case be a good one, and in a bad one never will be attended to.—The charge against Mr. *Graham* is of a most outrageous nature ;—a charge which if it had been this day clearly and fully proved, the only thing I should myself consider would be how far the law would allow me to punish him :—Because as far as the law would allow me in a crime of this nature, it would be my duty to go, and I should have lamented if the charge had been fully proved, that I could not have punished him in an exemplary manner. But the more outrageous the charge is, the more incumbent is it upon you to weigh and consider the evidence.—The charge is sworn to by *Corbally* the first witness ; but I need not tell you the situation he is in :—a man coming forward to swear positively to a thing without supporting that by circumstances attending the transaction is of itself weak evidence :—If it rested upon the evidence of *Corbally* singly, then you ought to weigh in the

scale

scale of credibility his evidence, that Mr. *Graham*,
 magistrate of this County, had gone privately to him
 in a corner of the Jail, and offered him a sum of
 £100. and to provide for him in the Revenue, if he
 would swear against Mr. *Tandy* and Mr. *Rorvan*;
 there would be nothing impossible in the transaction
 for any thing I know of the man charged, and you
 would judge of the credit of the man swearing to it.
 But when a man tells you of a magistrate having done
 an act, by which he would have not only forfeited his
 commission, but be punished in the most exemplary
 manner by the law of the land, it will be for your
 consideration to see, whether it is probable, that such
 a man would have ventured thus, and have made
 those offers in the presence of the Jailor—I say in
 his presence, if he had been his most particular friend
 and acquaintance, instead of being such a man as
 Mr. *White* mentioned, whose evidence has thrown
 much light upon this transaction—When he said that,
 unless *M'Kinly* came to establish it, there could be
 but little credit due to him.—Here, he said, this offer
 was made to him, in the presence of *M'Kinly*, and if
 they had not produced *M'Kinly*, the charge from me
 would be different from what it is—*M'Kinly* swears
 positively no such thing passed between *Graham* and
Corbally.—The testimony of *Corbally* himself, that the
 words which passed between *Graham* and him; were
 not in a low voice, or whisper, but as loud as I spoke
 to the witness himself, and that *M'Kinly* was so near
 him, it was impossible but that *M'Kinly* must have
 heard them. The room is described not to be so
 large as *Corbally* imagined, and *M'Kinly* was at such
 a distance, that he must have heard every word that
 C 3 passed ;

passed ; and he has sworn that no such thing passed between them. *Corbally* swears positively that what *Graham* said to him passed in the presence of *M^r Kinly* and no where else ; that is a leading circumstance which you must take into your consideration.—Therefore, if it rested here, it would be unnecessary to say more than, if you gave credit to what *M^r Kinly* said to direct you to find for the Traverfer.—But they impeach the character of *M^r Kinly*, and if they were supported in urging that *M^r Kinly* acknowledged those words in the presence of Doctor *Reynolds*, *M^r Kinly* would deserve no manner of credit, and his evidence should be thrown out of the case, and it would have then rested upon the testimony of *Corbally*.—But Doctor *Reynolds* gives an account himself that a quantity of wine was drank, and he does not attempt to say that *M^r Kinly* was sober ; and you will recollect that *M^r Kinly* in his evidence did say, when the question was put to him, Did you not declare so ? the answer was, I never did, and if I did, I must have been drunk.—You will then consider whether the evidence of Dr. *Reynolds* is such, as to discredit the evidence of *M^r Kinly*.—But, if it had remained a doubtful case, it would then be necessary to call the evidence of *White*.—If nothing passed between *Graham* and *Corbally* but what *M^r Kinly* said, *Graham* did nothing more than his duty.—With regard to *White*, he has mentioned a conversation with *M^r Kinly*, whose credit he is called upon to support—he told you what passed, and the answer he made, that no such words ever passed as *Corbally* said ; and *Corbally* does not pretend that any words passed at any other time—you will then consider whether *M^r Kinly* deserves credit.—If he does, *Corbally* can-

not deserve any :—but if he does deserve credit, and *M^r Kinly* does not, you will find the Traverfer guilty. —This part of the evidence is material to shew how improbable the testimony of *Corbally* is—so improbable in the light I now put it, that it scarcely deserves credit at all ; but when you consider the evidence of *White*, it explains the whole.—If, upon the whole, you believe *Corbally*, you will find the Traverfer guilty ; if not, you will acquit him.

Verdict——*NOT GUILTY.*

[17]

LIB